

COMPLAINT 2000 - NO. 5 - CONFLICT OF INTEREST

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint

Although the complaint is vague it seems to assert that Representative Reardon has a conflict of interest because he is employed by the City of Everett. There is a severe shortage of alleged facts which would assist this Board in determining what, exactly, the conflict is. In addition it is alleged that the Representative failed to submit the information regarding this employment with this Board for preview; that he violated the law prohibiting certain outside financial interests; and that he may have used his office for personal gain or private advantage.

II. Question of Jurisdiction

In certain circumstances the State Ethics Act requires that contracts with state agencies, including employment situations, be submitted to the Legislative Ethics Board for a conflict of interest analysis before the contract or employment becomes operative. "Agency" is defined in **RCW 42.52.010(1)** as follows:

"Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

The City of Everett is not a state agency. The allegation that Representative Reardon failed to submit his employment arrangement with the Board is dismissed for lack of jurisdiction.

III. Procedural History

Complaint 2000 - No. 5 was received on April 5, 2000. A fact-finding investigation was conducted pursuant to RCW 42.52.420. The Board deliberated on the complaint at its regular meeting on May 11, 2000.

IV. Determination of Allegations of Fact

Representative Reardon is experienced in the area of economic development and has developed particular expertise in dealing with the Endangered Species Act. His work history includes both volunteer and paid positions with business organizations and local government. He was

contacted by the City of Everett in 1998, prior to his election as State Representative, and interviewed for the salaried position of Project Coordinator. He accepted the job but advised the City he would not be able to begin his new duties until the first of the year because of existing employment commitments. Further, he advised the City that if he was elected he would have to delay employment until after the 1999 legislative session. The City did not condition his employment on the outcome of his election efforts. Representative Reardon's job responsibilities with the City involve both technical and policy issues and continuing involvement with the Endangered Species Act. The official job description describes the scope of work as involving research, project organization and responsibility for ensuring compliance with a variety of laws, regulations and rules.

V. Determination of Allegations of Ethics Law Violations

a. Conflict of interest - RCW 42.52.020

We recently reaffirmed the citizen-legislator concept, based upon the constitutional principle of a part time legislature (**Complaint 1999 - No. 5**). This principle establishes a presumption in favor of employment outside the legislature, for legislators. Lobbying and offering legislative advice for compensation are examples of "per se" conflicts of interest (**Advisory Opinion 1969 - No. 1**). There are no facts in this case which support a reasonable belief that a "per se" conflict exists. A conflict of interest can also occur if a legislator accrues a benefit as a member of a business, profession, occupation, or group to a greater extent than other members of the particular class while discharging his or her official duties (**Advisory Opinion 1995 - No. 1** - and numerous other references contained therein). There are no facts here to suggest any conflict of interest.

b. No outside compensation unless certain conditions are satisfied - RCW 42.52.120

The pertinent part of this statute prohibits a legislator from receiving any thing of economic value outside his or her official duties unless certain conditions are met.

1. The contract must be bona fide and actually performed;
2. The performance of the contract must not be within the course of the official duties or under the individual's official supervision;
3. The performance of the contract must not require unauthorized disclosure of confidential information; and
4. The contract cannot have been expressly created or authorized by the officer or employee in his or her official capacity.

No reasonable cause exists to believe that any of these conditions have not been met.

c. **RCW 42.52.900** - the intent section of the State Ethics Act

The complaint alleges that the intent section of the State Ethics Act has been violated. The Complainant misreads the law. There are substantive sections of the Act which address the issue of improper gain or private advantage. The intent section is basically a statement of values and serves as a guide to the interpretation of the substantive sections but it is not self-executing. Nevertheless, there are no facts alleged or discovered which would indicate there is any reasonable cause to believe that Representative Reardon's employment with the City of Everett was the result of the misuse of his legislative office for personal gain or private advantage.

VI. Conclusion and Order

This Board determines that the complaint is a fishing expedition and barely, if at all, alleges conduct sufficient to investigate. There are no facts alleged or discovered which even approach the reasonable cause standard we must find before proceeding with the complaint process. The complaint is dismissed.

James A. Andersen, Chair

Date